

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Vonage Holding Corporation)	WC Docket 03-211
Petition for Declaratory Ruling)	

COMMENTS OF THE MINNESOTA STATEWIDE 911 PROGRAM

The Minnesota Statewide 911 Program hereby submits these comments on the Vonage Holdings Corporation (“Vonage”) Petition for Declaratory Ruling in WC Docket 03-211.¹ The Minnesota Statewide 911 Program opposes Vonage’s request that the Federal Communications Commission (“Commission”) find the Order² of the Minnesota Public Utilities Commission (“MPUC”) requiring Vonage to comply with state laws is preempted. Preemption of the Minnesota Order may remove Vonage’s obligation to provide access to 911 services that is equivalent to other telecommunications serviced provider’s obligations in the State of Minnesota.³ Also, preemption may remove Vonage’s obligation to collect and remit fees for 911 service.

¹ 1 Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission (“Vonage Petition”), WC Docket No. 03-211 (filed Sept. 22, 2003).

² Complaint of Minnesota Department of Commerce Against Vonage Holding Corp Regarding Lack of Authority to Operate in Minnesota, Order Finding Jurisdiction and Requiring Compliance (“Minnesota Order”), Docket No. P-6214/C-03-108, September 11, 2003.

³ Minnesota takes 911 very seriously, as evidenced by MPUC Rules, Section 7811.0550, and 7812.0550 that require Competitive Local Exchange Carriers to file a 911 plan for each 911 jurisdiction, and condition authority to operate on approval of the 911 plan.

Introduction

The Minnesota Statewide 911 Program⁴ is responsible for statewide implementation and operation of 911 systems in Minnesota. The Minnesota Statewide 911 Program recommends the Commission: (1) declare the voice service that Vonage is providing via Internet Protocol to be classified as a telecommunications service provider of local exchange service; (2) require all telecommunications service providers to adhere to North American Numbering Council (NANC) rules prohibiting offering North American Numbering Plan (NANP) resources outside of the NANC assigned rate centers; (3) order Vonage to collect and remit 911 taxes and fees to local jurisdictions based on the address of the Vonage customer; and (4) require Vonage and other VoIP companies to develop and deploy, by a date certain, the same or better access to 911 services as is available today from some wireless carriers and all other local exchange carriers.

Vonage is providing a telecommunications service

The Vonage argument that it is an information service provider because it performs a net change on the form of the transmission is wrong. It ignores the fact that Vonage (by providing the Customer Premises Equipment⁵ at no additional cost) provides phone-to-phone Internet Protocol (IP) telephony service. The customer's analog telephone set plugs into the Analog Telephone Adapter (ATA) provided by Vonage, and the ATA (the property of Vonage⁶) converts the analog voice to IP in the first place. Then, when Vonage converts it back to analog voice, Vonage falsely claims there is a net change in form.

Regardless of who owns and provides the ATA, however, the crucial element defining Vonage as a telecommunications service provider is the connection to the Public Switched Telephone Network (PSTN) and access via NANP telephone numbers to any telephone. Vonage is

⁴ The Statewide 911 Program is currently a function of the Minnesota Department of Administration. Responsibilities include ensuring each 911 system meets minimum technical and operational requirements compliant with Minnesota Statutes Chapter 403, paying for the 911 networks and distributing grant funds from a state-wide telephone surcharge fund, and furnishing technical assistance as counties improve their 911 systems and add new telecommunications service providers such as wireless and wire line competitors to the incumbent local exchange carriers. A complete description of the Minnesota Statewide 911 Program is available at <http://www.911.state.mn.us>, the Statewide 911 website.

⁵ http://www.vonage.com/features_free_phone_adapter.php, accessed 10-27-2003: "Vonage provides all of our customers with a free Cisco ATA-186 phone adapter. (ATA stands for Analog Telephone Adapter.) This device converts your analog phone signal to digital so that it can be sent over your broadband connection, and into the Vonage network. Vonage has selected the Cisco ATA-186 because of its exceptional quality and reliability. It's delivered to all of our customers free when they sign up for Vonage service. Each one has been tested to work flawlessly with your Vonage service."

⁶ http://www.vonage.com/features_terms_service.php accessed 10-27-2003: "4.6 Disconnect Fee Customer will be charged a disconnect fee of \$39.99 per voice line upon termination of Service for any reason or for convenience by Customer. The disconnect fee becomes due and payable immediately upon termination and will be billed directly to Customer's credit card. If Customer has multiple lines, Customer will be charged a disconnect fee of \$39.99 per line for each line disconnected. To receive a credit for the disconnect fee, Customer must: return the Device(s) within fourteen (14) days of termination and. Vonage will not credit Customer if the Device(s) is damaged or not in its original condition as received by the Customer. In the event Customer disconnects multiple lines, Vonage will issue Customer a credit for all disconnect fees upon receipt of all Devices (e.g., Multimedia Terminal Adapters, etc.) in accordance with this Section."

providing a telecommunications service by offering itinerant voice-to-voice connectivity over the PSTN using NANP resources.

Vonage would argue that state and local government would regulate such services as AOL Instant Messenger⁷ if given the chance. The Minnesota Statewide 911 Program disagrees. There is no interest in regulating instant message services (nor Vonage customer to Vonage customer services, for that matter) as long as the subscribers are not connected over the PSTN, not accessible to any telephone, and not capable of dialing 911.

Adherence to NANC rate center rules

Vonage is using NANP numbers (apparently provided by local exchange carriers in each of the areas Vonage has obtained numbers from, then touts the capability to provide the equivalent of geographic number portability at the whim of the customer. "With Vonage, you are no longer tied to your "local area code". You can select any Area Code you want from our list of available area codes. This means even if you live in New York, you can have a California area code."⁸

NANP resources are considered a public resource that cannot be sold, brokered, bartered, or leased to others. Vonage should not be allowed to offer NANP resources outside of the NANC assigned rate centers.

If NANC rate center rules were followed it would ease the 911 issues because home service areas would be restricted to service offering areas and 911 areas. Certainly, some "roaming provision" would have to be accommodated, but a customer's home service area would be consistent with existing PSTN service.

Vonage should collect and remit 911 taxes and fees

All subscribers of telecommunications carriers capable of accessing the 911 network are assessed a fee under Minnesota Statutes, Section 403.11.⁹ Vonage expects the Public Safety Answering Point ("PSAP") to handle Vonage customer emergency calls, and Vonage customers should be required to pay a fair share for supporting the of 911 services in their jurisdiction. Vonage should be required to collect and remit 911 surcharge fees. The Minnesota Statewide 911 Program received a check from representatives of Vonage after the MPUC decision, but their attorneys asked us to return it after a Federal Court ruling¹⁰ staying the Minnesota ruling. Vonage should be considered a telecommunications carrier, and Vonage customers should pay their share of emergency 911 costs.

⁷ http://wp.netscape.com/aim/index_ie5.html, accessed 10-27-2003.

⁸ http://www.vonage.com/area_codes.php, accessed 10-27-2003.

⁹ Available at <http://www.revisor.leg.state.mn.us/stats/403/11.html>, with updates at <http://www.revisor.leg.state.mn.us/slaws/2003/ss1.01.html>, for 2003 1st Special Session updates.

¹⁰ Federal District Court Judge Michael Davis. Vonage Holdings Corporation, Civil No. 03-5287 (MJD/JGL) Plaintiff, v. The Minnesota Public Utilities Commission, and Leroy Koppendrayer, Gregory Scott, Phyllis Reha, and R. Marshall Johnson, in their official capacities as the commissioners of the Minnesota Public Utilities Commission and not as individuals, Defendants.

Vonage must make 911 available and help develop and deploy Enhanced 911

Vonage is to be lauded for recognizing that 911 service for its customers is a necessary element of providing useful telecommunications service that meets customer expectations. Vonage has implemented an interim method of allowing a Vonage customer to dial 911, and have basic 911 service; connection to a PSTN number at public safety in the customer's self-described area with no callback number or location information.¹¹

This is a good first step, although two voice conference calls since August of this year and one visit from an Intrado representative, Vonage's 911 agent, has failed to provide representatives of the Minnesota Statewide 911 Program and Metropolitan 911 Board¹² with an adequate explanation of how a Vonage customer's address is keyed to a PSTN number and the source of the PSTN numbers used. These are implementation issues that should be easily overcome with further contacts. This interim step would be a logical first step for all VoIP service providers. A Commission order requiring basic 911 from all VoIP service providers that access the PSTN would be directly comparable to the rules requiring wireless carriers to allow 911 dialing and route 911 calls to a PSAP.¹³

Vonage is actively pursuing improvements to the rudimentary interim basic 911, and should be encouraged to continue actively cooperating with public safety to eventually provide Vonage customers the same enhanced 911 functionality available from other wire-line service providers.

Minnesota is proud to be among those states that have implemented enhanced wireless 911 in counties covering 94% of the population, and is on track to have enhanced wireless 911 from all wireless carriers in all counties by the end of 2005. Getting this far was not easy. There was a role for regulation from the Commission, and for all the stakeholders to work toward a common goal, providing the wireless customer's location and callback number from devices that are more mobile than most, if not all Vonage customers.

The Minnesota Statewide 911 Program is convinced that the Commission's active regulatory oversight, coupled with the active cooperation of the industry and public safety would lead to a useful timely technically feasible solution to the enhanced 911 issues facing VoIP providers

¹¹ http://www.vonage.com/features_911.php, accessed 10-27-2003: "Vonage 911. Your Safety Is Important. Vonage is proud to offer 911 emergency dialing. When you dial 911, your call is routed from the Vonage network to the Public Safety Answering Point (PSAP) for your area. There are several important differences between our Emergency Services dialing and traditional 911 dialing that you need to know: ...".

¹² Available at <http://www.metro911board-mn.org>.

¹³ Title 47, CFR 20.18, available at http://www.access.gpo.gov/nara/cfr/waisidx_02/47cfr20_02.html.

Conclusion

In conclusion, the Minnesota Statewide 911 Program recommends that the Commission:

- 1) Declare the voice service that Vonage is providing to be a telecommunications service;**
- 2) Require Vonage and all telecommunications service providers to adhere to NANC rules prohibiting offering NANP resources outside of the NANC assigned rate centers;**
- 3) Order that Vonage is responsible to collect and submit 911 surcharges and other telephone fees assessed by state or local jurisdictions equivalent to the amounts required of customers of local exchange carriers; and**
- 4) Set criteria and timelines for Vonage and other VoIP providers to follow that will provide users with the same or better access to 911 services as is available today from local exchange carriers.**

Respectfully submitted this 27th day of October, 2003.

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